Fraudulent Transfers and the Subsequent Transferee Defense Under the Bankruptcy Code and UFTA
Meeting or Overcoming the Defense for Subsequent Transferees of Payments From the Debtor

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FRAUDULENT TRANSFERS AND SUBSEQUENT TRANSFEREE DEFENSES UNDER THE BANKRUPTCY CODE AND UNIFORM FRAUDULENT TRANSFER ACT

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• Our opinions are ours and they are not necessarily the Trustee’s opinions or those of SIPC.

• We cannot and will not speculate about how any issues we discuss today that arise in the bankruptcy context would be decided in the SIPA context.

• Further, we will not discuss claims trading of the SIPA claims and would ask that program attendees refrain from asking such questions in the Q&A portion of our presentation.
The Bankruptcy Code separates the concepts of avoidance and recovery. Bankruptcy Code sections 544, 547, 548 and 549 authorize bankruptcy trustees and DIPs to avoid certain pre- and post-petition transfers to creditors and others.
Bankruptcy Code section 550 governs the recovery of avoided transfers or their value.

Section 550(a) provides that the debtor “may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or (2) any immediate or mediate transferee of such initial transferee.”
Section 550 distinguishes between initial transferees and subsequent transferees.

- Initial transferees receive the transfer directly from the debtor or the transfer is made for their benefit.
- A subsequent transferee can be the recipient of the transfer from the initial transferee or an earlier subsequent transferee.
Once a transfer is avoided, it can be traced down the line to any subsequent transferee and recovered so long as properly traced, even if commingled with other funds.
Courts have adopted various tests to aid debtors in tracing transfers in commingled bank accounts, which include without limitation:

- the “first in, first out” test
- the “last in, first out” test
- the “lowest intermediate balance” rule

Other tests may apply in other contexts.

Certain tracing rules have been restated in the Restatement of Restitution and Unjust Enrichment.
The following hypothetical will be used to illustrate the application of “first in, first out” and “last in, first out” tests:

1. Seller gets a $100 payment from Company for a shipment of widgets.

2. Seller puts the $100 into a concentration account and then puts in $100 of payments from other customers.

3. Seller then withdraws $150 from the concentration account to pay a dividend to Equity Holder.

4. Company files for Chapter 11 bankruptcy shortly afterwards and the debtor-in-possession seeks to avoid and recover the $100 payment from (x) Seller as the initial transferee and (y) from Equity Holder as the subsequent transferee.
Introduction to Avoidance and Recovery Liability and Defenses (cont.)

- The “first in, first out” test provides that the first funds withdrawn from a commingled account correspond to the first funds put in, and all subsequent withdrawals correspond to the funds put in thereafter in the order that they were put it.

- In the hypothetical, $100 of the funds paid by Seller to Equity Holder would be traceable to the debtor because (1) the $100 payment from the debtor was the first funds put into the account, and (2) the $150 withdrawal is deemed to be made from the first funds in the account.
FIFO

$100 Non-Debtor Funds

$100 Debtor Funds

$150 withdrawal

$50
Introduction to Avoidance and Recovery Liability and Defenses (cont.)

• The “last in, first out” test the context of making distributions from a commingled account to depositors who are owed the return of their funds. It would require that the entities that most recently put in money receive distributions of their funds first, followed by other creditors in the inverse order of when they paid into the account.

• In the hypothetical, only $50 of the funds paid by Seller to Equity Holder would be traceable to the debtor because (1) the $100 payment from the debtor was the first funds put into the account, and (2) the $150 withdrawal is deemed to be made from the last funds in the account.
LIFO

$100 Non-Debtor Funds

$100 Debtor Funds

$150 withdrawal

$50
Introduction to Avoidance and Recovery Liability and Defenses (cont.)

The “lowest intermediate balance” rule (LIBR) applies most often in the context where trust funds have been put into commingled accounts.

- It treats withdrawals from the account as made first against the funds not held in trust.

- For example, if the account balance is greater than or equal to the amount of trust funds, the entire amount of the trust funds are considered traceable to the account.

- Once the trust funds are withdrawn, those funds are no longer considered traceable to the particular account even if the account’s balance is later replenished with other unrelated funds.

- Therefore, the party seeking the return of the funds may only recover from the accountholder up to the amount of the lowest balance the account ever held between the time the funds were put in and the action to recover them.
The following hypothetical illustrates how the LIBR is applied: Law Firm gets $100 in trust from Client to be paid as settlement funds once a dispute in which Law Firm represents Client is resolved. Law Firm puts the $100 payment into an IOLTA and then improperly puts in $100 from another client for payment of services. Law Firm then improperly withdraws $100 from the IOLTA to pay an equity distribution to Partner. Client files for Chapter 11 bankruptcy shortly afterwards and the debtor-in-possession seeks to avoid and recover the trust funds from Law Firm as the initial transferee and from Partner as the subsequent transferee.

- The LIBR will assume Law Firm withdrew the non-trust funds, so that the debtor can trace the $100 of trust funds to the remaining balance in the account.

- Now say Law Firm withdraws $125 to pay Partner. The LIBR will consider only the $75 remaining on deposit in the account to consist of traceable funds. Because $25 of the trust funds have left the account, the LIBR no longer considers these funds traceable.
Section 550(b) provides defenses to recovery liability for subsequent transferees. Section 550(b)(1) provides a defense to a transferee who “takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided . . . .” Section 550(b)(2) extends this defense to “any immediate or mediate good faith transferee of such transferee.”

- Section 550(b)(1) requires a subsequent transferee to show (1) good faith and (2) value
- Section 550(b)(2) extends this defense to transferees further down the chain.
These defenses are designed to be consonant with the non-bankruptcy policy of protecting *bona fide* purchasers (BFP) for value or holders in due course from having to disgorge funds or their value based on the knowledge of the initial transferee.
Introduction to Avoidance and Recovery Liability and Defenses (cont.)

- The Uniform Fraudulent Transfer Act section 8(b)(2) is the state-law equivalent of section 550(b). It protects transferees to the extent the transferees gave “value” in good faith.

- A minority of states, like New York, have codified the older Uniform Fraudulent Conveyance Act, which also protects good-faith transferees that provide value for the transfer. (See N.Y. Debtor & Creditor Law section 278(1) (“Where a conveyance . . . is fraudulent as to a creditor, such creditor, . . . may” recover “as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase . . . ”) (emphasis added).)
Discussion of key subsequent transferee defenses issues - Value

• “Value” is an affirmative defense; a transferee relying on the defense has the burden of proof.

• “Value” for subsequent transferees is measured against the initial transferee and not the debtor like in the initial transferee context.

• Looks to what the transferee gave up rather than what the transferor or any prior transferor, including the debtor, received. *Bonded Fin. Servs., Inc. v. European Am. Bank*, 838 F.2d 890 (7th Cir. 1988); see *Genova v. Gottlieb (In re Orange County Sanitation, Inc.)*, 221 B.R. 323 (Bankr. S.D.N.Y. 1997).
• The transferee next in the chain after the initial transferee (the secondary transferee) must show that it gave value to invoke the section 550(b) defense.

• However, any subsequent transferee of a subsequent transferee that gave value need only receive the transfer in good faith. There is no requirement for a transferee at the third tier or beyond to give value, consistent with treating such a transferee as a BFP.
• Value is not defined in the Bankruptcy Code and is a highly fact-based analysis.

• Transactions that satisfy, discharge or secure all or part of an otherwise legitimate obligation are for "value." For example, the repayment of a loan.
Transactions that are gifts or other gratuitous transfers do not give value as a matter of law. As a general rule, these include:

- **Outright gifts.** See e.g., *Youngblut v. Pepmeyer (In re Pepmeyer)*, 275 B.R. 539, 545 (Bankr. N.D. Iowa 2002) (debtor received no value in gifting ownership of an annuity to his daughter)

- **Property passing under a will.** See *Gray v. Snyder*, 704 F.2d 709 (4th Cir. 1983) (no value could be assigned to release of inheritance rights by the transferee-spouse)
Transactions that do not give value (cont.):

- **Corporate dividends.** See *Pereira v. Equitable Life Ins. Society (In re Trace Int’l Holdings, Inc.)*, 289 B.R. 548, 560–61 (Bankr. S.D.N.Y. 2003) (dividends paid from an insolvent corporation to shareholders were made for no value and therefore, were fraudulent conveyances).


- **Charitable contributions**, such as tithes and offerings to a church, to the extent avoidable. See *In re Lewis*, 401 B.R. 431, 436 (Bankr. C.D. Cal. 2009) (collecting cases)
Discussion of key subsequent transferee defenses issues – Value (cont.)

Courts have crafted three tests to determine whether a subsequent transferee has provided value:

(1) contract sufficiency,
(2) reasonably equivalent value, and
(3) fair market value
Discussion of key subsequent transferee defenses issues – Value (cont.)

**Contract Sufficiency**

For some courts, under section 550(b), a subsequent transferee must provide “merely consideration sufficient to support a simple contract . . .” to its transferor. See 5 COLLIER ON BANKRUPTCY ¶ 550.03[1] (16th ed. 2015); *Lewis v. Zermano (In re Stevinson)*, 194 B.R. 509, 513 (D. Colo. 1996); *In re Commercial Loan Corp.*, 396 B.R. 730, 743 (Bankr. N.D. Ill. 2008).
Discussion of key subsequent transferee defenses issues – Value (cont.)

Contract Sufficiency (cont.)

• Does not require that value given by the transferee be reasonable or a fair equivalent.

• Analogous to the “value” required under state law to achieve the status of a *bona fide* purchaser for value. See *Redmond v. Brooke Holdings, Inc. (In re Brooke Holdings, Inc.),* 515 B.R. 632 (Bankr. D. Kan. 2014) (only value needed for section 550(b), without regard to its equivalence to the transfer, is value akin to the protections for purchasers of goods under the Uniform Commercial Code).
Discussion of key subsequent transferee defenses issues – Value (cont.)

Reasonably Equivalent Value

• In the initial transferee context, the reasonably equivalent value test requires a court to “examine the totality of the circumstances surrounding the transfer in question.” *Pereira v. WWRD US, LLC (In re Waterford Wedgwood USA, Inc.)*, 500 B.R. 371, 381 (Bankr. S.D.N.Y. 2013).

• The factors considered are “(i) the fair market value of the economic benefit received by the debtor [from the transferee]; (ii) the arms-length nature of the transaction; and (iii) the good faith of the transferee.” *Pereira*, 500 B.R. at 381.
Discussion of key subsequent transferee defenses issues – Value (cont.)

**Reasonably Equivalent Value (cont.)**

- A dollar-for-dollar exchange is not required. Courts instead examine the transaction to see if the transfer was for “roughly” the amount received.

- For subsequent transferees, it may be appropriate to view multiple transfers separately to determine whether value was provided for purposes of section 550(b). See Rodgers v. Monaghan Co. (In re Laguna Beach Motors, Inc.), 159 B.R. 562, 569 (Bankr. C.D. Cal. 1993) (viewing two separate payments independently in determining section 550 defense).
Discussion of key subsequent transferee defenses issues – Value (cont.)

**Fair Market Value**

- Used by courts either as a subset of the reasonably equivalent value test or as a stand-alone test of value.

- *Brown v. Harris (In re Auxano, Inc.)*, 96 B.R. 957, 965 (Bankr. W.D. Mo. 1989) adopted the fair market value measurement after considering what the subsequent transferee parted with and the purpose of the avoidance and recovery powers to preserve assets of the estate.
FBO defendant versus subsequent transferee

Section 550(a): Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553 (b), or 724 (a) of this title, the [debtor] may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or (2) any immediate or mediate transferee of such initial transferee.
Discussion of key subsequent transferee defenses issues – other (cont.)

FBO defendant versus subsequent transferee (cont.)

- Section 550 provides for recovery from (1) an initial transferee, (2) an entity for whose benefit the transfer was made, who is considered a subset of a direct “initial transferee”, or (3) a subsequent transferee.


- Section 550 does not allow recovery of an avoided transfer for the benefit of a subsequent transferee.
Discussion of key subsequent transferee defenses issues – other (cont.)

FBO defendant versus subsequent transferee (cont.)

_Hypothetical:_ Debtor pays Uncle for purpose of paying Niece’s college tuition. Uncle transfers funds to College for tuition for Niece. Debtor can recover from Uncle (entity to whom transfer was made), Niece (entity for whose benefit transfer was made), or College (subsequent transferee).
Recovery from either initial transferee or subsequent transferee

• The debtor is entitled to recover an avoided transfer either from initial transferee or the subsequent transferee. Both are liable for the transfer or its value.

• See e.g., In re Circuit Alliance, Inc., 228 B.R. 225, 236 (Bankr. D. Minn. 1998) (the Bankruptcy Code “contemplates a joint suit against both initial transferee and converting beneficiary, as well as all subsequent transferees not entitled to the defense of § 550(b)”)

Discussion of key subsequent transferee defenses issues – other (cont.)
Discussion of key subsequent transferee defenses issues – other (cont.)

Recovery from either initial transferee or subsequent transferee (cont.)

• However, the debtor is limited to a single satisfaction under section 550(d)

• Section 550(d): “[the debtor] is entitled to only a single satisfaction under subsection (a) of this section.”

• See In re Prudential of Florida Leasing, Inc., 478 F.3d 1291 (11th Cir. 2007) (under section 550(d), debtor was limited to a single recovery for each transfer).
Recovery from either initial transferee or subsequent transferee (cont.)

• The Bankruptcy Code does not provide an express or implied right to an initial transferee to seek indemnity or contribution from a subsequent transferee or beneficiary of the transfer.

Recovery from either initial transferee or subsequent transferee (cont.)

- However, courts have recognized that initial transferees may seek contribution or indemnity from subsequent transferees or visa-versa under other applicable law, such as agency law or by agreement. See e.g., Agra-By-Products, 1985 WL 660781, at *1.

- Such actions are not within the bankruptcy court’s jurisdiction. See In re Pearson Indus., Inc., 142 B.R. 831 (Bankr. C.D. Ill. 1992) (dismissing for lack of jurisdiction initial transferee’s third-party complaint seeking indemnity or contribution for transfer from subsequent transferee).
Recovery from either initial transferee or subsequent transferee (cont.)

• Under section 502(h), a subsequent transferee from whom the debtor recovers a transfer under section 550 may pursue a claim against the bankruptcy estate as if such claim were a prepetition claim. See *Southmark Corp. v. Schulte, Roth & Zabel, LLP*, 242 B.R. 330, 341 (N.D. Tex. 1999).

• Claims traders: should be aware that they may be liable for the transfer with the initial transferee subject to any defenses, such as a value defense
Discussion of key subsequent transferee defenses issues – other (*cont.*)

**Subsequent transferee may raise initial transferee defenses**

- Section 550 allows recovery of a transfer only “to the extent that a transfer is avoided.”
- Some courts have interpreted this to require a successful avoidance action against the initial transferee before the debtor may recover from a subsequent transferee.
Subsequent transferee may raise initial transferee defenses (cont.)

• However, the majority view is that a transfer may be found avoidable and a recovery may be had from a subsequent transferee without first suing the initial transferee.

• In an action against the subsequent transferee, the debtor has the burden of proving that the transfer to the initial transferee is avoidable.
Subsequent transferee may raise initial transferee defenses (cont.)


- Absent collateral estoppel or res judicata, a subsequent transferee may raise any and all defenses to avoidance and recovery available to the initial transferee, including that the transfer was not avoidable or that the transferee did not have knowledge of the voidability of the transfer under section 550(b)(1). See Tibble v. Farmers Grain Express, Inc. (In re Michigan Biodiesel, LLC), 510 B.R. 792, 799 (Bankr. W.D. Mich. 2014).
Discussion of key subsequent transferee defenses issues – other (cont.)

Subsequent transferee may raise initial transferee defenses (cont.)

• For example, if initial transferee has settled with the debtor for less than the total amount sought to be recovered, the subsequent transferee defendant may assert defenses available to the initial transferee, even if the initial transferee did not raise those defenses. See In re Flashcom, Inc., 361 B.R. 519, 525 (Bankr. C.D. Cal. 2007) (stipulated or default judgment in avoidance action does not preclude defendants in recovery action from disputing the avoidability of the transfer or raising appropriate defenses).

• However, because of the single satisfaction rule, the subsequent transferee is only liable for the remaining balance of the transfer sought to be recovered.
Discussion of key subsequent transferee defenses issues – other (cont.)

Subsequent transferee may raise initial transferee defenses (cont.)

• Likewise, if an initial transferee has failed to raise a given defense, the subsequent transferee may raise that defense.

• This is a matter of due process because the subsequent transferee may not have been involved in the litigation to avoid the initial transfer.
Statute of Limitations on Recovery

- Section 550 contains its own statute of limitations.
- Subsection (f) provides that an action to recover under section 550 must be brought no later than the earlier of:
  - one year after the transfer was avoided or
  - the date the case is closed or dismissed.
Discussion of key subsequent transferee defenses issues – other (cont.)

Statute of Limitations on Recovery (cont.)

- Debtors will usually, but not always, file a consolidated action to avoid the transfer and recover the property transferred or its value.

- But where the debtor does not know the identity of, or even if there was a subsequent transferee, the debtor can start with the initial transferee and then use the section 550(f) statute of limitations once that initial transfer is avoided.
Statute of Limitations on Recovery (cont.)

• A settlement (subject to the single satisfaction rule) with the initial transferee triggers the section 550(f) statute of limitations. See ASARCO LLC v. Shore Terminals LLC, No. 11-01384, 2012 WL 2050253, at *5 (N.D. Ca. June 6, 2012).

• Courts have reasoned that, if a settlement did not trigger section 550(f), the statute of limitations would be indefinite because a trigger event, i.e., the initial avoidance, may never occur.
Discussion of key subsequent transferee defenses issues – other (cont.)


• The unsecured creditors’ committee in the *Tribune* chapter 11 case brought adversary proceedings asserting actual fraudulent transfer claims against the debtor’s cashed-out shareholders, directors / officers, and others who benefitted from a prepetition LBO of the debtor.

• Individual creditors then brought actions asserting state-law constructive fraudulent conveyance claims to unwind buyouts of the debtor’s shareholders.

• The actions were consolidated into a multi-district litigation and defendants moved to dismiss individual creditor actions.
Automatic stay of concurrent state-law fraudulent transfer claims (cont.)

- The district court granted the motion. It held that the individual creditors lacked standing to bring fraudulent transfer claims targeting the same transactions the committee was targeting.

- The automatic stay deprived the individual creditors from bringing state-law fraudulent conveyance claims, despite the fact that the unsecured creditors’ committee was asserting an actual fraud theory and the individual creditors were asserting a constructive fraud theory.
Discussion of key subsequent transferee defenses issues – other (cont.)

Automatic stay of concurrent state-law fraudulent transfer claims (cont.)

• However, the district court also found that limitations on some of the of the debtor’s avoiding powers under section 546 of the Code did not preempt the state-law claims.

• The language of that section did not provide for preemption because it expressly imposed those limitations on a “trustee,” which in a Chapter 11 case means a debtor-in-possession, and not other parties with standing and thus there was no preemption under the Supremacy Clause.

• The court recognized the risk that bankruptcy trustees will simply assign section 544(a) claims to creditors if barred by section 546(a), but reasoned that the concerns were overstated in light of the fact that the automatic stay bars state-law fraudulent conveyance claims brought concurrently with the debtor so that the bankruptcy court would still retain some control.
A receiver for an investment trust that operated as a Ponzi scheme brought an action against a law firm under the Utah Uniform Fraudulent Transfers Act (UFTA) to recover funds that the trust paid for an individual’s defense against a state-court criminal charge.

The law firm argued that it received the payments for value because it provided legal services to the individual criminal defendant. The district court rejected this argument and granted summary judgment to the receiver.
The 10th Circuit Court of Appeal affirmed. It reasoned that the good-faith transferee defense in the Utah UFTA wasn’t available to the law firm because:

(1) the trust did not receive “reasonably equivalent value” for the funds transferred to the law firm; and

(2) the law firm was an initial and not a subsequent transferee of funds and hence defenses available to subsequent transferees did not apply.
Transferee defense in Utah UFTA: “A transfer . . . is not voidable . . . against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee . . . .” Utah Code Ann. § 25-6-9(1).

A subsequent transferee who is “a good faith transferee who took for value” also has a defense. Utah Code Ann. § 25-6-91(2)(b).
Tenth Circuit’s Rulings:

- Reasonably equivalent value
  - Required to give value to the debtor
  - Law firm’s legal services did not benefit anyone but the individual criminal defendant.

- Initial transferee v. subsequent transferee
  - Firm received funds directly from trust and thereby was the initial transferee
  - Defenses available to subsequent transferees hence not available.
The Uniform Fraudulent Transfers Act is the model act adopted by many states to authorize avoidance and recovery of fraudulent transfers. UFTA section 8 sets forth the defenses to avoidance and recovery:

(a) A transfer or obligation is not voidable under Section 4(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under Section 7(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

(2) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.
Uniform Voidable Transactions Act (cont.)

- Under the UFTA section 8(a), a transfer made with the intent to hinder, delay, or defraud a creditor is not voidable if a transferee takes the transfer in good faith and for reasonably equivalent value.

- As originally written, the transferee did not need to show that it gave value to the debtor for the transfer.
Uniform Voidable Transactions Act (cont.)

• There is no equivalent defense to avoidance in the Bankruptcy Code, which requires a showing of good-faith and value to the debtor.
  
  – Section 548(c): Except to the extent that a transfer . . . voidable under this section is voidable under section 544, 545, or 547 of this title, a transferee . . . of such a transfer . . . that takes for value and in good faith has a lien on or may retain any interest transferred . . . to the extent that such transferee . . . gave value to the debtor in exchange for such transfer . . . . (Emphasis added.)

• Under the UFTA, any subsequent transferee who took the transfer in good faith and for value also has a defense. (UFTA § 8(b)(2).)
Uniform Voidable Transactions Act (cont.)

The Uniform Law Commission has recently promulgated revisions to the UFTA and changed the name of the model act to the Uniform Voidable Transactions Act (UVTA). The UVTA made two significant amendments to the defenses to avoidance and recovery:

• Limited the value defense to avoidance to value given to the debtor

• Expanded the value defense to recovery so that it applies to recovery of or from the transferred property or its proceeds
Amendment 1: Limited value defense to avoidance to value given to the debtor

UVTA section 8 (as redlined against the UFTA) provides:

(a) A transfer or obligation is not voidable under Section 4(a)(1) against a person who took in good faith and for a reasonably equivalent value given to the debtor or against any subsequent transferee or obligee.

(b) To the extent a transfer is avoidable in an action by a creditor under Section 7(a)(1), the following rules apply:

(1) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under Section 7(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

   (i) the first transferee of the asset or the person for whose benefit the transfer was made; or

   (2) (ii) any subsequent transferee an immediate or mediate transferee of the first transferee, other than a good faith transferee who took for value or from any subsequent transferee.

   (A) a good faith transferee who took for value, or from

   (B) any subsequent transferee any immediate or mediate good-faith transferee of a person described in clause (A).
Amendment 1: Limited value defense to avoidance to value given to the debtor (cont.)

• This amendment limits the value defense to avoidance to value given to the debtor.

• Applies to any defendant against who the debtor is seeking to avoid the transfer, which is typically the initial transferee but may be a subsequent transferee.
Amendment 1: Limited value defense to avoidance to value given to the debtor (cont.)

• This amendment further aligns the defense to avoidance in state fraudulent transfer law with the defense in the Bankruptcy Code.

• This amendment does not alter the defense to recovery under UFTA, under which defendants need only show good faith and value to the transferor (such as the initial transferee). (See UFTA § 8(b)(1)(ii).)
Amendment 2: Expanded value defense to recovery of or from the transferred property or its proceeds

- Under the UFTA, the defense for a subsequent transferee that took in good faith and for value (and for a subsequent transferee of that transferee) literally applied only to an action for money judgment.

- The UVTA provides that that defense also applies to recovery of or from the transferred property or its proceeds, by levy or otherwise.

- This amendment is consistent with section 550 of the Bankruptcy Code.
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